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In the

# Supreme Court of the United States

October Term, 1961

No. 127

STANDARD DRUG COMPANY,
INCORPORATED,
*Appellant*

v.

GENERAL ELECTRIC COMPANY,
*Appellee*

## MOTION TO DISMISS OR AFFIRM

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## MOTION TO DISMISS OR AFFIRM

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The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Appeals of Virginia on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

# I.

# THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

## A.

### The Statute

This appeal raises the question of the validity of certain provisions of the Virginia "Fair Trade Act" (Acts of Assembly of Virginia, 1958, Chapter 259; Section 59-8.1 through 59-8.9 of the Code of Virginia, 1950, as amended).

This statute provides that no contract relating to the sale or resale of a commodity which bears, or the label or container which bears, the trade-mark or trade name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the State by reason of the fact that it contains a provision that the buyer will not resell such commodity at less than the minimum price stipulated by the seller. The statute provides that such a contract may be created either by written agreement or by acceptance of the goods for resale after actual notice that the seller is requiring that the goods be sold at not less than the minimum prices specified by the seller in accord with the Virginia statute.

## B.

### The Proceedings Below

The Appellant, after the effective date of the Virginia Fair Trade Act, purchased certain flashbulbs bearing the

Appellee's trade-mark directly from the Appellee. The Appellant admittedly purchased the bulbs after receipt of notice given by the Appellee in accord with the Virginia statute that the bulbs were not to be resold at less than a certain minimum specified retail sale price.

Contending that the Virginia Fair Trade Act was invalid under the Virginia and Federal Constitutions and statutes enacted pursuant thereto, the Appellant instituted this action for a declaratory judgment that the Act was invalid and that it was not bound to maintain the minimum prices stipulated by the Appellee. The Law and Equity Court of the City of Richmond, by a decree entered June 27, 1958, upheld the validity of the Act and denied the Appellant the relief sought. Upon appeal to the Supreme Court of Appeals of Virginia, the decision of the lower court was affirmed. *Standard Drug Company, Inc.* v. *General Electric Company*, 202 Va. 367.

## II.

## ARGUMENT

### The Case Presents No Substantial Question Not Previously Decided By This Court

Since the case of *Old Dearborn Distributing Co.* v. *Seagrams Distillers Corp.*, 299 U.S. 183, it has been well established that state statutes in permitting the manufacturers and distributors of articles bearing their trade name or trade-mark to specify the minimum prices at which such articles may be resold present no question under the Constitution of the United States and that persons who purchase such articles with knowledge of the conditions under which they are sold acquire the same subject to the conditions and

are bound thereby. As recently as November 15, 1960, this court dismissed an appeal from a decision of the Maryland Court of Appeals enforcing the provisions of the Fair Trade Act of that state. See *Dart Drug Corp.* v. *Gadol*, ..... U. S. ....., 5 L. Ed. 192.

The Miller-Tydings Act and the McGuire Act make clear that fair trade contracts which are lawful, as applied to intrastate transactions under a state statute, are exempted from the prohibitions of the Sherman Antitrust Act, even as to a "nonsigner" who knowingly sells below the prices specified. 15 U.S. C.A. §§ 1 and 45(a).

The Virginia statute is patterned directly upon the ruling in the *Old Dearborn* case, *supra*, in that it requires either an express or written contract between the owner of the trademarked article and those to whom he sells the article for resale, or an implied contract arising from the latter's acceptance of the article with actual knowledge of the conditions upon which they are sold to him for resale. The fact that the Virginia statute provides that acceptance of the article under such conditions shall be deemed to be assent to the terms of the conditions presents no Federal question.

## III.

## CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Appeals of Virginia.

Respectfully submitted,

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